

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No.583 of 1991

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For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : NO

STATE OF GUJARAT

Versus

GOVINDLAL JAYSJANKER PANDYA RAIPUR VACHI SHERI NO.462

Appearance:

Shri B.Y. Mankad, ADDL. PUBLIC PROSECUTOR for Petitioner
MS BANNA S DUTTA for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 06/10/98

ORAL JUDGEMENT :

1. The State has preferred this appeal against the order of acquittal recorded by the learned Metropolitan Magistrate, Court No.16, Ahmedabad, on 21.5.1991 in Criminal Case No.2021 of 1989, wherein the accused was tried for offences punishable under secs.324, and 504 of IPC and under sec.135(1) of the Bombay Police Act.

2. Raginiben Kanhaiyalal, PW 1 got the complaint

registered before the Police on 22.8.1989 against her father in law. The accused herein on a flimsy quarrel after abusing daughter in law delivered a blow by means of a 'washing stick' (a small wooden instrument akin to bat used for washing clothes). As a result of this there was a bleeding from the injury. On receipt of the complaint the Investigating Officer on investigation found that there is a *prima facie* case against the accused. Hence filed a charge sheet. The accused pleaded not guilty to the offences and contended that he had committed no offence. The trial court on appreciation of evidence acquitted the accused.

3. This is a sorry state of affairs that the daughter in law was constrained to file a complaint against her father in law. Her husband was mentally disturbed since about six months. She was serving as a teacher in a school. On account of flimsy quarrel the incident in question has taken place. It appears that her son was crying and was not willing to put on jersey. Thereupon the complainant is alleged to have stated that "since morning his father is after her and thereafter son also followed the same path". It appears that saying so she administered a slap to the boy. As a result of which the boy started crying. On account of this, it is alleged that the father in law got enraged and delivered a blow on the person of daughter in law.

4. Witnesses have been examined by the prosecution who are residing nearby house wherein the accused and the complainant are residing. Witnesses appear to have come to the scene immediately after the incident and they have seen the bleeding injury on the person of the complainant. On appreciation of evidence the trial court acquitted the accused. In the instant case the Panchas are not examined. The Medical Officer who is alleged to have examined the complainant is also not examined. Therefore, what was the nature of the injury caused on the person of the complainant is not before the court. In absence of nature of injury and considering the nature of evidence the trial court has acquitted the accused. Whether the incident took place in the house or outside the house is also not clear. The witnesses were not in a position to say whether the son of the complainant was there or what was stated by the complainant to the son. Anilaben is not residing in the house. But is staying near the house of the accused and her attention was drawn subsequent to the incident in question. Witnesses have gone to the extent of stating that the complainant became unconscious which fact appears to be incorrect. Even in the complaint it is not exactly stated where the incident

took place. If the incident took place in the house then the story of other witnesses becomes doubtful. Learned Public Persecutor after going through the evidence of the witnesses was not in a position to say that the view taken by the learned Magistrate could not have been taken on the facts and in the circumstances of the case. It is pointed out that the accused must be of 72-73 years of age. Learned advocate for the accused submitted that from the evidence it is equally possible to come to the conclusion that without any intention the accused might have caused injury, but the other view taken by the learned Magistrate is also possible. If that be so this Court should not interfere with the order of acquittal, more particularly, looking to the nature of the matter. The quarrel has taken place between two family members.

5. Under the aforesaid circumstances when the learned Magistrate discussed the evidence in detail and has arrived at the conclusion no case is made out for interference. Hence the appeal is dismissed.

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